

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE

v.

ANTHONY A. ABBATIELLO,

Defendant.

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I.D. # 1505015619A

1505015619B

Submitted: January 3, 2020

Decided: April 8, 2020

**ORDER DENYING ANTHONY ABBATIELLO'S
MOTION TO COMPEL AND MOTION TO APPOINT EXPERT**

This 8th day of April, 2020, upon consideration of the Motion to Compel¹ and Motion to Appoint Expert² filed by Anthony A. Abbatiello, it appears to the Court that:

1. On July 24, 2019, Abbatiello filed the Amended Motion to Compel seeking an order requiring the State to produce T-Mobile phone records or alternatively to compel T-Mobile to provide such records.

2. The evidence Abbatiello requests is not in the State's possession.³ The State has turned over the phone records it has; Abbatiello continues to cling to the unsubstantiated belief that the State altered or held back some portion of those phone records. There is nothing more for the Court to compel from the State. The Court

¹ D.I. 122. Citations to the docket in this order are to the docket in I.D. No. 1505015619A.

² D.I. 135.

³ D.I. 131 at ¶ 5.

also cannot compel evidence from a third party whom Abbatiello has not subpoenaed. Moreover, the requested evidence relates to two of Abbatiello's postconviction motion claims⁴ that procedurally are barred. Even if the Court could order the relief Abbatiello seeks, he has not demonstrated good cause for that relief because the Court cannot address the merits of the postconviction claims to which the discovery relates.⁵

3. Additionally, Abbatiello filed the Motion to Appoint Expert on January 3, 2020, seeking appointment of a cell site analysis expert under Delaware Rule of Evidence 706. Abbatiello's reply to the Motion to Compel⁶ and the Motion to Appoint Expert challenge the authenticity of the certification for the T-Mobile records.

4. It is not clear how the authenticity of the T-Mobile records relates to the Motion to Compel. But, in any event, the fact that the certification bears a later date than the date the records were provided to the State or the defense is not

⁴ See D.I. 123 at 8-10 ("Claim 2"); *id.* at 12-13 ("Claim 4").

⁵ Superior Court Criminal Rule 61 does not provide for additional discovery during postconviction proceedings, but this Court has the inherent authority to exercise its discretion to grant or deny postconviction discovery for good cause shown. See *Cabrera v. State*, 173 A.3d 1012, 1032 (Del. 2017). A showing of good cause during postconviction proceedings is greater than that needed for pretrial discovery. *Id.* at 1033; see, e.g., *Dawson v. State*, 673 A.2d 1186, 1198 (Del. 1996) (finding no good cause shown where defendant had shown no compelling reason for such discovery); *State v. Brathwaite*, 2014 WL 4352170, at *1 (Del. Super. Aug. 29, 2014) (finding no good cause shown where defendant failed to provide "any factual support or legally viable argument," but instead "proclaims in conclusory terms that there were errors and/or misconduct by his attorney which were extremely prejudicial to his defense").

⁶ D.I. 134.

significant and does not support appointing an expert during postconviction proceedings. The certification relates to the admissibility of the records under the Delaware Rules of Evidence.⁷ Divergent dates are not evidence that the records are not genuine or that Investigator Brian Daly committed perjury.

NOW, THEREFORE, IT IS ORDERED that Anthony A. Abbatiello's Motion to Compel and Motion to Appoint Expert are **DENIED**.


Abigail M. LeGrow, Judge

Original to Prothonotary

cc: Matthew Keating, Deputy Attorney General
Anthony A. Abbatiello, *pro se* (SBI No. 791624)

⁷ D.R.E. 803(6)(D); 902(ii).